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Attorneys for Defendant, **BRANT BLAKEMAN**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

CORY SPENCER, an individual; DIANA MILENA REED, an individual; and COASTAL PROTECTION RANGERS, INC., a California non-profit public benefit corporation,

Plaintiffs,

vs.

LUNADA BAY BOYS; THE INDIVIDUAL MEMBERS OF THE LUNADA BAY BOYS, including but not limited to SANG LEE, BRANT BLAKEMAN, ALAN JOHNSTON AKA JALIAN JOHNSTON, MICHAEL RAE PAPAYANS, ANGELO FERRARA, FRANK FERRARA, CHARLIE FERRARA, and N.F.; CITY OF PALOS VERDES ESTATES; CHIEF OF POLICE JEFF KEPLEY, in his representative capacity; and DOES 1-10,

Defendants.

CASE NO.: 2:16-CV-2129-SJO-RAO
Assigned to Courtroom: 10C
The Hon. S. James Otero

Magistrate Judge:
Hon. Rozella A. Oliver

DEFENDANT BRANT BLAKEMAN'S EX PARTE APPLICATION FOR A PROTECTIVE ORDER; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PETER H. CROSSIN IN SUPPORT; [PROPOSED] ORDER

[Fed. Rules Civ. Proc., 26(c)]

Action Commenced: March 29, 2016

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Brant Blakeman ("Defendant") seeks this protective order pursuant to FRCP 26(c) to stay the taking of his deposition, currently schedule for November 10, 2016, due to Plaintiffs' continued stonewalling of their initial disclosure and discovery response obligations in providing Defendant with factual information he needs in order to prepare before he is deposed.

II. DEFENDANT'S COMPLIANCE WITH MEET AND CONFER REQUIREMENTS IN CONNECTION WITH THIS EX PARTE

Pursuant to FRCP 26(c)(1) and Local Rule 7-19.1, Defendant's counsel called Plaintiffs' counsels Victor Otten and Kurt Franklin at approximately 11:10 a.m. on November 8, 2016, to discuss this ex parte. Neither Mr. Otten nor Mr. Franklin were in the office. A message was then left on Mr. Franklin's voicemail to call Defendant's counsel. (See Crossin Declaration)

If Plaintiffs' counsel does not get back to Defendant's counsel, waiver from this notice requirement is requested pursuant to Local Rule 7-19.2.[1]

III. PROTECTIVE ORDER

"A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or

[1] Defendant did advise Plaintiffs' counsel that he would be seeking ex parte relief by way of a protective order in his counsel's meet and confer letter to Plaintiffs' counsel dated November 7, 2016. (Exhibit 5 to Crossin Declaration)

expense, including one or more of the following:

(A) forbidding the disclosure or discovery . . .” FRCP 26(c)(1)(a)

Defendant’s request for protective order herein is to forbid the discovery deposition of Defendant until Plaintiffs comply fully with both their initial disclosure obligations and substantively respond to Defendant’s discovery requests.

IV. SUBSTANCE AND TIMELINE WARRANTING ISSUANCE OF A PROTECTIVE ORDER

Defendant received Plaintiffs’ initial disclosures on August 24, 2016. Defendant’s counsel sent a meet and confer letter to Plaintiffs’ counsel on September 2, 2016, citing to deficiencies in the disclosures. Particularly, the witnesses disclosure failed to provide contact information for numerous of the witnesses, denying Defendant the right to discovery and investigate into the witnesses’ knowledge. The disclosures failed to provide subject matter information for the witnesses as required by FRCP 26(a)(1)(A)(I). This information is needed by Defendant Blakeman so that he may investigate, discover into, defend the allegations in the complaint that relate to him as an individual, and *prepare for his deposition*. (See September 2, 2016, letter. Exhibit 1 to Crossin Declaration).

On September 9, 2016, Defendant’s counsel sent a follow-up letter in response to Plaintiffs’ counsel’s email response. It was noted that Plaintiffs’ counsel was refusing to comply with availability for a Local Rule 37-1 meet and confer over the issues raised in the September 2 letter. (See September 9, 2016, letter. Exhibit 2 to Crossin Declaration).

Having gotten nowhere despite good faith meet and confer efforts for Plaintiffs to comply with their initial disclosure obligations, Defendant propounded written discovery to Plaintiffs designed to obtain the needed information not provided in Plaintiffs’ disclosures. This discovery was served on September 16, 2016, and Plaintiffs’ responses were served on October 20, 2016 - untimely by one day.

The purpose of the written discovery was to obtain factual evidence from

Plaintiffs that support their allegations and contentions *as against Defendant Blakeman individually, and not in his capacity as an alleged member of a gang.* For example, the discovery sought evidence supporting:

1. That Mr. Blakeman committed enumerated predicated crimes under Penal Code 186.22;
2. That Mr. Blakeman violated the Bane Act and public nuisance laws;
3. That Mr. Blakeman sold, markets, and uses controlled substances;
4. That Mr. Blakeman impeded boat traffic in navigable waters;
5. That Mr. Blakeman dangerously disregarded surfing rules;
6. That Mr. Blakeman illegally extorted money from beach goers;
7. That Mr. Blakeman is part of a Civil Conspiracy
8. That Mr. Blakeman violated the Bane Act as to each plaintiff;
9. That Mr. Blakeman is a nuisance as to each plaintiff;
10. That Mr. Blakeman assaulted each plaintiff;
11. That Mr. Blakeman battered each plaintiff;
12. That Mr. Blakeman committed some negligent act causing injury to each plaintiff.

This evidence is absolutely necessary for Defendant's defense and, in particular relevance to this ex parte application for protective order, his ability to appropriately prepare for his deposition.

Having received only boilerplate objections to the discovery, with a reference that no answers to the requests will be provided, Defendant's counsel sent a meet and confer letter on October 28, 2016. The letter requested Plaintiffs' counsel's availability for a Rule 37-1 meet and confer conference. The letter specifically gave notice that Defendant Blakeman would not be produced for deposition until Plaintiffs complied with their disclosure and discovery obligations. (See October 28, 2016, letter. Exhibit 3 to Crossin Declaration).

Plaintiffs' counsel Victor Otten responded to the October 28 letter via email

dated November 1, 2016. In the email, Mr. Otten advised that because he was in trial he could not meet and confer in compliance with Rule 37-1. He did not indicate whether any of the other multiple attorneys representing Plaintiffs would engage in a meet and confer conference in his stead. (See November 1, 2016 email. Exhibit 4 to Crossin Declaration)

Having no choice, Defendant's counsel sent a *fourth* meet and confer letter dated November 7, 2016. Defendant's counsel detailed the ongoing stonewalling on Plaintiffs' part in providing relevant and needed disclosure and discovery evidence, dating from Plaintiffs' first initial disclosure; as well as a continued pattern by Plaintiffs' counsel in failing to meet and confer in good faith. The letter again expressed the absolute need for the requested evidence in order for Defendant Blakeman to prepare his defense and prepare for deposition. In this latter regard, the letter stated:

> We will ask the Magistrate Judge ex parte to stay the deposition of Mr. Blakeman until such time as Plaintiffs provide the full and complete answers to the written discovery served by Mr. Blakeman October 16, 2016, and for an order that any documents not disclosed either in response to that discovery or in the initial or supplemental disclosures by Plaintiffs be excluded for the action and excluded specifically from any evidence presented as to Mr. Blakeman.
>
> Alternatively we will ask the magistrate Judge to stay all non-class certification related discovery until such time as a class is certified, if ever, since if certification is denied your clients' claims will be individual in nature and (based on their deposition testimony) will have nothing to do with any actionable claims by your clients against Mr. Blakeman. We will request that the Magistrate order monetary sanctions against Plaintiffs and their counsel for the cost of these delays and the cost of bringing this motion for a protective order.

(See November 7, 2016, letter. Exhibit 5 to Crossin Declaration).

Plaintiffs' counsel responded that Plaintiffs are standing by their discovery responses and that they will not agree to taking Defendant Blakeman's November 10,

2016, deposition off-calendar.[2] Morever, during party depositions, questions by Plaintiff's counsel to other parties in the case have at times referred to events allegedly involving Defendant Blakeman for which the facts, identity of witnesses and documents have obviously been withheld from both their initial disclosures and discovery responses.

Defendant can be frustrated and prejudiced no longer. It would be patently unfair and prejudicial to allow Plaintiffs to deny Defendant basic factual information concerning his alleged individual liability in this action, while allowing Plaintiffs to take Defendant's deposition in a calculated plan leaving him unprepared to respond and defend against Plaintiffs' claims.

Parties must make a "particularized showing" under Rule 26(c)'s good cause requirement for court to enter protective order. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006). For the reasons set forth herein and in the declaration of Peter H. Crossin, Defendant has made such a good cause showing. Defendant's request for a protective order staying his deposition until Plaintiffs comply fully with their disclosure and discovery obligations should, therefore, be granted.[3]

DATED: November 8, 2016

VEATCH CARLSON, LLP

By: /s/ Peter H. Crossin
ROBERT T. MACKEY
PETER H. CROSSIN
Attorneys for **BRANT BLAKEMAN**

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[2] Defendant will be timely filing a motion to compel further discovery responses.

[3] Near the close of business on Friday, November 4, 2016, Plaintiffs served electronically upwards of 2000 documents supplementing their initial disclosure. Obviously, Defendant and his counsel do not have the time to review these documents to prepare Defendant for his deposition prior to November 10.

DECLARATION OF PETER H. CROSSIN

I, PETER H. CROSSIN, declare as follows:

I am an attorney at law duly licensed to practice before all of the Courts of the State of California, and am a partner in the law firm of Veatch Carlson, LLP. As such, I am fully familiar with the facts and circumstances of this action, and, if called as a witness, would and could competently testify to the following facts hereto.

1. Pursuant to FRCP 26(c)(1) and Local Rule 7-19.1, I called Plaintiffs' counsels Victor Otten and Kurt Franklin at approximately 11:10 a.m. on November 8, 2016, to discuss this ex parte. Neither Mr. Otten nor Mr. Franklin were in the office. I then left a message on Mr. Franklin's voicemail to call me back to discuss. If Plaintiffs' counsel does not get back to Defendant's counsel, waiver from this notice requirement is requested pursuant to Local Rule 7-19.2.

2. Defendant received Plaintiffs' initial disclosures on August 24, 2016. Defendant's counsel sent a meet and confer letter to Plaintiffs' counsel on September 2, 2016, citing to deficiencies in the disclosures. Particularly, the witnesses disclosure failed to provide contact information for numerous of the witnesses, denying Defendant the right to discovery and investigate into the witnesses' knowledge. The disclosures failed to provide subject matter information for the witnesses as required by FRCP 26(a)(1)(A)(I). This information is needed by my client so that he may investigate, discover into, defend the allegations in the complaint that relate to him as an individual, and *prepare for his deposition*. (A true and correct copy of the September 2, 2016, letter is attached hereto as Exhibit 1).

3. On September 9, 2016, Defendant's counsel sent a follow-up letter in response to Plaintiffs' counsel's email response. It was noted that Plaintiffs' counsel was refusing to comply with availability for a Local Rule 37-1 meet and confer over the issues raised in the September 2 letter. (A true and correct copy of the September 9, 2016, letter is attached hereto as Exhibit 2).

4. Having gotten nowhere despite good faith meet and confer efforts for Plaintiffs to comply with their initial disclosure obligations, Defendant propounded written discovery to Plaintiffs designed to obtain the needed information not provided in Plaintiffs' disclosures. This discovery was served on September 16, 2016, and Plaintiffs' responses were served on October 20, 2016 - untimely by one day. The purpose of the written discovery was to obtain factual evidence from Plaintiffs that support their allegations and contentions as against Defendant Blakeman individually, and not in his capacity as an alleged member of a gang. This evidence is absolutely necessary for my client's defense and, in particular relevance to this ex parte application for protective order, his ability to appropriately prepare for his deposition.

5. Plaintiffs' counsel Victor Otten responded to the October 28 letter via email dated November 1, 2016. In the email, Mr. Otten advised that because he was in trial he could not meet and confer in compliance with Rule 37-1. He did not indicate whether any of the other multiple attorneys representing Plaintiffs would engage in a meet and confer conference in his stead. (A true and correct copy of the November 1, 2016 email is attached hereto as Exhibit 4)

6. Having no choice, Defendant's counsel sent a *fourth* meet and confer letter dated November 7, 2016. Defendant's counsel detailed the ongoing stonewalling on Plaintiffs' part in providing relevant and needed disclosure and discovery evidence, dating from Plaintiffs' first initial disclosure; as well as a continued pattern by Plaintiffs' counsel in failing to meet and confer in good faith. The letter again expressed the absolute need for the requested evidence in order for Defendant Blakeman to prepare his defense and prepare for deposition and noted that he would not be produced for deposition without disclosure and production of this evidence. (A true and correct copy of the November 7, 2016, letter is attached hereto as Exhibit 5).

7. Plaintiffs' counsel responded that Plaintiffs are standing by their discovery responses and that they will not agree to taking Defendant Blakeman's

November 10, 2016, deposition off-calendar.

8. My client can be frustrated and prejudiced no longer. It would be patently unfair and prejudicial to allow Plaintiffs to deny Defendant basic factual information concerning his alleged individual liability in this action, while allowing Plaintiffs to take Defendant's deposition in a calculated plan leaving him unprepared to respond and defend against Plaintiffs' claims.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 8th day of November, 2016, at Los Angeles, California.

/s/ Peter H. Crossin
PETER CROSSIN

EXHIBIT 1

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September 2, 2016

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Re: **SPENCER, CORY v. LUNADA BAY BOYS**
Date of Loss : 04/14/16
Our File No. : 010-08018.

Dear Counsel:

We received plaintiffs' initial disclosures on August 24, 2016. I write to meet and confer and ask that plaintiffs supplement their initial disclosure without delay. As identified below it appears plaintiffs have not properly disclosed witnesses, the information that such witnesses may testify to, or a computation of damages.

Witnesses Disclosed Relating to Plaintiffs' Claims

Plaintiffs have alleged causes of action against the "Lunada Bay Boys" and individual defendants for violations of the Bane Act, for Public Nuisance, for Violations of the California Coastal Act, for Assault, for Battery and for Negligence. The claims under the California Costal Act have now been dismissed. Plaintiffs allege a single cause of action against the City of Palos Verdes and the Chief of Police for an Equal Protection violation under 42 U.S.C. § 1983.

Plaintiffs have identified 116 witnesses likely to have discoverable information that they may use to support their claims. Of these witnesses approximately 104 are non party witnesses. Plaintiffs' witnesses 11-12 and 15-91 are all identified to relate the acts of the "Lunada Bay Boys" and individual defendants with witnesses 11, 12, 19 and 30 also having some interaction with the City of Palos Verdes. Plaintiffs' witnesses 92-101 are all identified to relate to declarations submitted to the Costal Commission. Plaintiffs' witnesses 102-116 all appear to be police officers that made a report regarding certain incidents, many which appear to predate the applicable statute of limitations.

In plaintiffs' complaint they allege acts that have been occurring since the 1970s that allegedly give rise to the cause of actions asserted. (Complaint at ¶ 18.) There are various statutes of limitations that apply to plaintiffs' claims of which the most senior is 3 years. (California Code of Civil Procedure Sections 335.1, 338(a), 338(b), 343, 340 and California Public Resources Code Section 30805.5) The complaint was filed on March 29, 2016 thus the only relevant information would be that relating to any acts or omissions from March 29, 2013 until present. Any witnesses that do not relate to information that is within the statute of limitations applicable to plaintiffs' causes of action should be removed.

As you are aware plaintiffs at the scheduling conference stipulated that the Costal Act Claims are dismissed by stipulating that the Court's order of July 7, 2016 applied to all defendants. Any witnesses that only relate to violations of the Costal Act Claims should be removed.

We desire to depose only the pertinent relevant witnesses. In order to do so witnesses who have information that only applies to causes of action that have been dismissed and that do not have information relating to actionable claims within the statute of limitation should be removed.

Disclosure of Witness Contact Information

The parties are required to disclose certain information related to witnesses with their initial disclosure. Rule 26 provides the following should be disclosed:

> **(i)** the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(F.R.C.P., Rule 26(a)(1)(A)(i).)

Plaintiffs have provided very limited information for witnesses to be contacted or subpoenaed. Witnesses listed numerically as 55-67, 71-73, 77, 81-82, 84-86, and 88-89 all have their contact information disclosed as being "*can be contacted through counsel.*" While we appreciate that non parties may be contacted through an unknown "counsel" we still desire to have their contact information.

Please supplement the disclosures and provide all contact information for witnesses listed numerically as 55-67, 71-73, 77, 81-82, 84-86, and 88-89 including their addresses and telephone numbers. For any person that is represented by counsel please inform us who the counsel is and provide the counsel's contact information. If any of plaintiffs' counsel happens to represent such persons then please forward us a letter of representation for any such persons without delay.

Disclosure of the Subject Matter of Information Discoverable from Witnesses

Plaintiffs are required to not only disclose witness who may have information supporting a party's case but also the subject matter of the discoverable information. (FRCP, Rule 26(a)(1)(A)(i).) Of the 104 non party witnesses listed by plaintiffs the disclosed subject matter of the information the witnesses have that is discoverable is identified by plaintiffs in the following manner:

- "on the allegations set forth in the complaint related to Defendant Lunada Bay Boys and Individual Members of the Lunada Bay Boys." (Witnesses 16-17, 20- 29, 31-54, 56-91.)

- "on the allegations set forth in the Complaint related to Defendant City of Palos Verdes Estates, Defendant Lunada Bay Boys, and Individual Members of the Lunada Bay Boys." (Witnesses 11 and 12.)

- "on the allegations set forth in the Complaint related to Defendant City of Palos Verdes Estates, Defendant Lunada Bay Boys, and Individual Members of the Lunada Bay Boys and communications with the Defendant City of Palos Verdes Estates. (Witnesses 19 and 30.)

- "on the subjects set forth in the complaint, to which he was a percipient witness." (Witnesses 55.)

- "on the subject of the declaration submitted to the California Costal Commission regarding trail access." (Witnesses 92-101.)

- "on the subject regarding incident report number…" (Witnesses 102-116).

It is obvious that the identified persons support allegations in the complaint merely through their identification. The subject matter of the discoverable information the specific witnesses may have though is not disclosed in any way regarding Witnesses 11-12 and 15-91. The only known limits on these Witnesses testimony are they will not testify regarding allegations against the City (with the exception of Witnesses 11, 12, 19, and 30). Considering there is only one cause of action against the City, that is primarily based on the acts of "Lunada Bay Boys," this is really not much more than saying they support plaintiffs' claims.

> [O]ne of the obvious purposes of the initial disclosure rule is to provide each party with enough information to make an informed decision as to whether they want to incur the substantial expense of deposing a disclosed witness or engaging in other types of discovery to determine the specifics of that witness's knowledge about the case.

(Moore v. Deer Valley Trucking, Inc. (D. Idaho, Oct. 2, 2014, No. 4:13-CV-00046-BLW) 2014 WL 4956170, at *2.) There is no way any individual party can distinguish between Witnesses 11-12 and 15-91 (77 total witnesses) who have information that relates to claims *made against a particular party* versus the other parties, or who a particular party may desire to depose based on the allegations made against that particular party.

For example it is unknown what witnesses may support an assault or battery claim against any particular defendant. This information may be very relevant for one defendant in addressing the actions of themselves *or others* in the defense of such claims. It would seem logical that not all 77 witnesses have information regarding all 10 defendants assaulting and battering someone in the past two years.

The purpose of the initial disclosures rule is not fulfilled by plaintiffs' current disclosure regarding the subject of the discoverable information the witnesses may have. In light of the volume of witnesses disclosed, the number of causes of action alleged, plaintiffs' contentions that certain acts started in the 1970s and continue today, plaintiffs' contention that 12 defendants be limited to 15 total depositions collectively, and the extreme nature of the relief plaintiffs seek *it appears plaintiffs are directly refuting the purpose of the initial disclosure rule in order to prejudice the defense of plaintiffs claims.*

Plaintiffs' current disclosures would cause defendants to have no idea how to prioritize the depositions of the 77 people who may offer information related to any particular defendant. The vagueness of the subject matter the witnesses may testify to coupled with the vagueness of the complaint and plaintiffs' current position that defendants be limited to 15 depositions further buttresses the need for a more substantive disclosure.

As you should be aware we will seek exclusion of any witnesses from testifying or offering evidence related to subject matter that plaintiffs have not disclosed. (See Commonwealth Capital Corp. v. City of Tempe (D. Ariz., Apr. 7, 2011, No. 2:09-CV-00274 JWS) 2011 WL 1325140, at *1 (Rule 37(c)(1) functions to preclude both witnesses and information).) Plaintiffs should be cognizant of this remedy in supplementing their disclosures.

At this time we ask plaintiffs to supplement all witness disclosures by minimally providing information regarding the subject matter the witness may testify to that includes any causes of action it relates to, the actual named defendants it relates to, and other information related to the subject matter the witness will testify to as plaintiffs believe it pertains to their claims. We expect that plaintiffs will be willing to be bound by any further disclosure and the exclusion of any information not affirmatively disclosed.

Computation of Damages

The parties are required to disclose certain information related to the computation of damages with their initial disclosure. Rule 26 provides the following should be disclosed:

> **(iii)** a computation of each category of damages claimed by the disclosing party--who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each

> computation is based, including materials bearing on the nature and extent of injuries suffered;

(F.R.C.P., Rule 26(a)(1)(A)(iii).)

Plaintiffs' computation of damages is in substance no more than reflection of their prayer for relief in the complaint. Not one allegation of damages is made to any particular defendant. As indicated before plaintiffs have made many allegations that may apply to different defendants in this case.

> Plaintiff should provide its assessment of damages in light of the information currently available to it in sufficient detail so as to enable each of the multiple Defendants in this case to understand the contours of its potential exposure and make informed decisions as to settlement and discovery.

(Frontline Medical Associates, Inc. v. Coventry Health Care (C.D. Cal. 2009) 263 F.R.D. 567, 569.)

Plaintiff should be able to offer some computation of damages under each cause of action as to each separate defendant. Just like the disclosure of witnesses plaintiffs should only be addressing what relates the damages compensable within the statute of limitations for plaintiffs' claims that are still present in the case.

For example this should include those penalties for alleged violations of the Bane Act as to each named defendant. This should be relatively simple by taking the number of alleged violations and multiplying it by the statutory penalty. (See Complaint – Relief, ¶ 16.) Any known "special damages" should also be disclosed as they pertain to any particular defendant. (Id., ¶ 10.)

Additionally the disclosures should now eliminate any penalties or damages sought under the California Costal Act.

* * *

Please be advised I have discussed the substance of this correspondence with all defense counsel who represent the 10 individual defendants (those other than the City and Chief of Police) with the exception of Mr. Carey. We are all in agreement that plaintiffs should supplement their disclosures based on the issues presented in this correspondence

If this dispute cannot be resolved we will be forced to move the Court to compel plaintiffs to comply with Rule 26(a)(1). Resolution of this dispute will also further the respective parties position regarding discovery and proposing modifications to the discovery rules as it applies to this case, which where not modified by the scheduling order despite all parties desire for some modifications. It will also help all parties to efficiently prepare for trial, particularly in light of the Court indicating each side will only be provide 12 ½ hours to conduct the trial.

Please advise us if plaintiffs are willing to supplement their initial disclosures in accord with the issues identified in this correspondence. If so, please inform us the time frame you propose for supplemental disclosures to be made within the next two weeks. If plaintiffs are unwilling to supplement their responses please provide me your availability in the next 10 days in order to comply with Local Rule 37-1 for a telephonic or in office meeting.

Very truly yours,

VEATCH CARLSON

JOHN P. WORGUL

JPW:adb

cc: All Defense Counsel [See Attached Service List]

SERVICE LIST

Cory Spencer, et al v. Lunada Bay Boys, et al.

USDC, Central District, Western Division Case No.: 2:16-cv-02129-SJO (RAOx)

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EXHIBIT 2

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September 9, 2016

SENT VIA FACSIMILE AND EMAIL

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Re: **SPENCER, CORY v. LUNADA BAY BOYS**
Date of Loss : 04/14/16
Our File No. : 010-08018.

Dear Counsel:

We are in receipt of Mr. Otten's September 7, 2016 email. This letter is sent in the hopes of resolving the issues in our September 2, 2016 correspondence related to plaintiff's initial disclosures. Please direct any response to the undersigned.

To be clear, we represent Mr. Blakeman, and our concerns relate to allegations, witnesses, documents, and evidence which Plaintiffs are required to disclose relating to Brent Blakeman. The proposal that we coordinate with the City is welcomed, and we continue to work with all defense counsel to coordinate where possible. Indeed we had proposed use of common defense interrogatories as a means for making this litigation more efficient, but Plaintiffs have thus far rejected that proposal.

The issues relating to Mr. Blakeman are the issues on which we are entitled to have full disclosure. Those issues are the ones addressed in Mr. Worgul's September 2, 2016 letter. Those are the issues for which we will meet and confer.

Mr. Otten has failed to provide us any times or dates to meet and confer in compliance Local Rule 37-1 despite our request in Mr. Worgul's September 2, 2016 correspondence. We have received no other communication from any of plaintiffs' other counsel regarding this request. Unless you inform me otherwise in writing I must assume none of plaintiffs' counsel intends to comply with the Local Rule.

Mr. Otten asks for authority for the contentions made in the September 2, 2016 letter. The authorities are set forth in the letter. Please review the citations in the letter to the Federal Rules and Federal Case Law. I attach a copy for your convenience.

Please also note that we have no position on "how" plaintiffs must disclose things in their initial disclosures, rather, our position is that "what" plaintiffs must disclose is clear, and is not met in the disclosures provided. Our position is that the current disclosures are wholly inadequate regarding the issues presented in the September 2, 2016 correspondence. The vague material provided does not meet the Plaintiffs' duties for initial disclosure of information. Failure to provide adequate disclosure prejudices Mr. Blakeman from providing a defense of the case, selecting witnesses to depose, and causes unnecessary burdens on Mr. Blakeman and his counsel, in derogation of the purpose of the initial disclosure requirements. Exclusion of known but undisclosed information is the remedy which we will ask the court to enforce absent substantial compliance with the disclosure requirements.

If plaintiffs do not comply with the Local Rules our nest option is to inform the Court and Magistrate upon the filling of a motion addressing this problem. Plaintiffs' dilatory tactics are greatly prejudicing Mr. Blakeman as the date for class certification is very quickly approaching, as are other events. We will seek the Magistrate's intervention with haste if plaintiffs do not resolve this dispute.

I ask that you comply with the Local Rule so that such a meeting may be held in order to avoid the need for motions. I have 1:30 p.m. on either Tuesday September 13 or Wednesday September 14 open. Please contact me if you believe this is possible.

Very truly yours,

VEATCH CARLSON

RICHARD P. DIEFFENBACH

RPD

cc: All Defense Counsel [See Attached Service List]

EXHIBIT 3

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October 28, 2016

SENT VIA FACSIMILE AND EMAIL

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Re: **SPENCER, CORY v. LUNADA BAY BOYS**
Date of Loss : 04/14/16
Our File No. : 010-08018.

Dear Mr. Franklin:

I am in receipt of Plaintiff Cory Spencer's responses to Interrogatories and Request for Production of Documents, Plaintiff Diana Milena Reed's response to Interrogatories and Request for Production of Documents, and Plaintiff Coastal Protection Rangers' response to Interrogatories and Request for Production of Documents.

I write to meet and confer regarding the responses we received, having plaintiffs provide further responses, having plaintiffs produce the records they state they will produce, and also seek a meeting with you within 10 days in accord with Local Rule 37-1.

PLEASE NOTE THAT DUE TO THIS DISPUTE MR. BLAKEMAN WILL NOT BE PRODUCED FOR DEPOSITION UNTIL THIS DISPUTE HAS BEEN RESOLVED.

Plaintiffs each allege causes of action against Mr. Blakeman in his personal capacity and specific to each plaintiff. Each plaintiff has alleged against Mr. Blakeman, not as a member of a group but as an individual, the following:

1. That Mr. Blakeman committed enumerated predicate crimes under Penal Code 186.22

2. That Mr. Blakeman violated the Bane Act and public nuisance laws;
3. That Mr. Blakeman sold, markets, and uses controlled substances;
4. That Mr. Blakeman impeded boat traffic in navigable waters;
5. That Mr. Blakeman dangerously disregarded surfing rules;
6. That Mr. Blakeman illegally extorted money from beach goers;
7. That Mr. Blakeman is part of a Civil Conspiracy
8. That Mr. Blakeman violated the Bane Act as to each plaintiff;
9. That Mr. Blakeman is a nuisance as to each plaintiff;
10. That Mr. Blakeman assaulted each plaintiff;
11. That Mr. Blakeman battered each plaintiff;
12. That Mr. Blakeman committed some negligent act causing injury to each plaintiff.

The discovery at issue merely seeks the *identification of witnesses*, the *identification of the facts* believed to be within the witness's knowledge and production of documents supporting plaintiffs' specific allegations against *Mr. Blakeman in his personal capacity*.

The discovery requests defined "BRANT BLAKEMAN" as follows:

> BRANT BLAKEMAN means only Brant Blakeman in his individual capacity. This definition expressly excludes Brant Blakeman as an alleged member of what plaintiff alleges are the "Lunada Bay Boys." This definition expressly excludes the actions or omissions of any other PERSON other than Brant Blakeman in his individual capacity. This definition expressly excludes acts of PERSONS other than Brant Blakeman that plaintiff attributes to Brant Blakeman under a theory of Civil Conspiracy.

Therefore, it should be rather clear that the discovery at issue is limited to the named plaintiff's claims against Mr. Blakeman and Mr. Blakeman's individual actions.

The Discovery Responses Were Untimely

The discovery was served by personal service on Mr. Otten and on your office by mail on September 16, 2016. Per agreement the responses were due based on service by mail. Responses are generally due within 30 days. (See FRCP Rule 33(b)(2) and Rule 34(b)(2)(A).) Where written discovery is served by mail the time to respond is extended by 3 days. (See FRCP Rule 6(d).) 33 days from September 16, 2016 is October 19, 2016.

The responses were not served until October 20, 2016, as indicated on the proofs of service. The responses were therefore not timely. *The objections were also therefore waived regarding the interrogatories*. (See FRCP 33(b)(4).)

Notably at no time after the discovery was propounded did you or any other of the plaintiffs' counsels seek an extension. Neither was there any protest as to the nature of this discovery or it being objectionable. Instead plaintiffs choose the path of non-disclosure and delay again.

We have previously expressed our desire to avoid gamesmanship and delays in discovery. The Court set a very short time frame for discovery to occur and plaintiffs were unwilling to phase discovery. In the event an extension is needed for any future please inform

us, but please do not continue to delay discovery as a tactic to avoid disclosure of information and prejudice Mr. Blakeman's defense.

Plaintiffs' Responses to Interrogatories

As the objections to the interrogatories were waived we expect that further responses will be provided without delay. Our experience with plaintiffs thus far unfortunately lead us to believe this will not occur and we anticipate you will not agree to provide further responses. Therefore the substance of the objections will be addressed.

Defendant Brant Blakeman has propounded the same twelve interrogatories to each plaintiff. The requests seek the identity of witness(es) that support(s) plaintiffs' contentions against Mr. Blakeman regarding the twelve areas of inquiries identified previously and also to identify the facts believed to be within each witness's knowledge.

Each plaintiff offers the same uniform boilerplate objections to every interrogatory seeking the disclosure of witnesses and identification of facts within that witnesses knowledge.[1] These objections were not timely made as noted above. *Each plaintiff contends that based on the objections no answers to the requests will be provided.* As no answers were provided a further response is necessitated.

Below I address each objection to the interrogatories, our position why the objection is not applicable. Again, please note each and every objection was waived by the untimely responses of your clients. The following substantive discussion merely amplifies the discovery abuse reflected in Plaintiffs' responses and demonstrates why full and complete responses are required.

Plaintiffs' Objection: Undue Burden, Harassment, and Duplication

Each plaintiff contends that identifying the witnesses to the claims against Mr. Blakeman is unduly burdensome and harassing and the information can be found in the initial and supplemental disclosures.

Plaintiffs in their initial disclosure identify potentially one witness with knowledge of Mr. Blakeman. This is Ken Claypool. If this is the only witness that plaintiffs are aware of for the 12 areas of inquiry in the interrogatories then it surely is not very burdensome to identify him and the facts believed to be within his knowledge as they relate to the specific inquiry. Surely if there are other witnesses that allege Mr. Blakeman did some act they can also be identified.

This objection by any plaintiff is not a justification to refuse to provide a response to the interrogatories, lacks merit, and should be removed.

[1] Plaintiff Cory Spencer includes in his responses that he additionally was deposed.

Plaintiffs' Objection: The Interrogatory is Compound and has Subparts

Plaintiffs contend the interrogatories are designed to circumvent the numerical limitations provided in FRCP Rule 33(a)(1). The objection wholly lacks merit.

The interrogatory seeks the identification of a witness and the facts within that witness's knowledge. FRCP Rule 33 allows the interrogatories to include "discrete subparts." Seeking the identification of witnesses and the facts within their knowledge are considered one interrogatory. (See *Chapman v. California Dept. of Educ.*, 2002 WL 32854376, at *1 (N.D.Cal.,2002).)

Furthermore, even was one to entertain plaintiffs' contention that the interrogatories did not contain discrete subparts *there are only two subparts*. If you take 12 interrogatories and multiply them by 2 this comes out to 24 interrogatories. This is within the limits of FRCP Rule 33 which allows for 25 interrogatories.

This objection by plaintiff is not a justification to refuse to provide a response to the interrogatories, lacks merit, and should be removed.

Plaintiffs' Objection: The Interrogatory Seeks Information that is Outside of Responding Party's Knowledge

Each plaintiff alleges that the request seeks information outside of the plaintiffs' knowledge. This objection either wholly lacks merit or there are very troubling issues related to the plaintiffs' and counsel's obligations under FRCP Rule 11's deemed verification requirements.

Viewing the untimely discovery non-responses objectively, each plaintiff makes specific and egregious allegations all without any personal knowledge of witnesses who will support the allegations (including the plaintiffs' themselves). This is tantamount to plaintiffs openly admitting this is a fishing expedition against Mr. Blakeman and they were in violation of Rule 11 since the complaint was filed. As to the assault and battery allegations against Mr. Blakeman, were they made without probable cause or any factual basis? If so please just state that and dismiss the action as to Mr. Blakeman.

If plaintiffs do not have knowledge the identity of witnesses that support their allegations they merely need to state there are none. Otherwise the witnesses should be identified.

This objection by plaintiff is not a justification to refuse to provide a response to the interrogatories, lacks merit, and should be removed.

Plaintiffs' Objection: The Interrogatory Invades the Attorney Client Privilege and Attorney Work Product Doctrine.

Plaintiffs object that identifying witnesses and the facts within that witness's knowledge that support Plaintiffs' allegations that Mr. Blakeman acted in some manner invades the attorney client privilege.

There is no legal support for withholding witnesses identities based on the attorney client privilege. Personal knowledge about facts is not privileged. "[T]he protection of the privilege extends only to *communications* and not to facts. A fact is one thing and a communication concerning that fact is an entirely different thing. (*Upjohn Co. v. U.S.*, 101 S.Ct. 677, 685–86, 449 U.S. 383, 395–96 (U.S.Mich.,1981).)

If all responses to the discovery are privileged, and Plaintiffs' stand on the privilege, none of the facts, witnesses or documents supporting Plaintiffs' allegations will be admissible. If that is the Plaintiffs' position, please dismiss the action as to Mr. Blakeman now in the interest of judicial economy.

Otherwise, since the only facts sought are witness identity as to specific issues and the believed factual information the witness possess, please provide full answers. This objection by plaintiffs is not a justification to refuse to provide a response to the interrogatories, lacks merit, and should be removed.

Plaintiffs' Objection: the Interrogatory is Premature as a Contention Interrogatory

Each plaintiff alleges the interrogatories are contention interrogatories and due to the early state of litigation and pre-trial discovery the responding party is unable to provide a complete response, nor it is required to so. Plaintiffs' cite to *Kmeic v. Powerwave Techs. Inc.*, *Folz v. Union Pacific Company*, and FRCP Rule 33(a)(2).

While in some contexts contention interrogatories can be delayed, these interrogatories do not fit that context and therefore should be answered. This matter involved plaintiffs in their individual capacities, as well as representative capacities, alleging intentional torts, nuisances, and negligence against Mr. Blakeman, and the questions asked relate to the basis for Plaintiffs' allegations. Surely there were personally known bases for these specific allegations. If not, please dismiss the action as to Mr. Blakeman.

Kmeic was a securities litigation matter. *Kmeic* involved asking contention interrogatories to a shareholder plaintiff early in litigation is very different from in this case. *Folz* related to defendant's contentions related to defendant's affirmative defenses, something that clearly would involve significant discovery to develop and is much different than this case.

It should be noted that these interrogatories are specific type of contention interrogatory. They seek the identification of witnesses that support plaintiffs' contentions that Mr. Blakeman committed some specific act alleged act *stated in the complaint filed by Plaintiffs*. The factual answers will allow Mr. Blakeman to depose such persons and to have a "just, speedy, and inexpensive determination [in this] action." (FRCP Rule 1.) If there are no facts, witnesses or documents, the complaint's allegations are baseless and the complaint should never have been filed. Please answer fully or dismiss the action as to Mr. Blakeman.

The identification of witnesses is important not only to Mr. Blakeman's defense but also because they would contribute meaningfully to narrow the scope of the issues in dispute, set up early settlement discussions, and expose the potential basses for a Rule 11 motion and Rule 56 motion. (*See HTC Corp. v. Technology Properties Ltd.*, 2011 WL 97787, at *2 (N.D.Cal.,2011); *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328, 338-339 (D.C.Cal.,1985).

As you are aware we have continually informed you that Mr. Blakeman intends to pursue motions under Rule 56 related to plaintiffs baseless allegations made against him.

Furthermore, even in *In re Convergent Technologies Securities Litigation* the Court recognized the importance of the identification of witnesses. (See *In re Convergent Technologies Securities Litigation*, 108 F.R.D. at 332-333). Despite the case being a complex securities litigation matter the Court still compelled the plaintiffs to respond to "contention" interrogatories seeking the identifies of witness. (See *In re Convergent Technologies Securities Litigation*, 108 F.R.D. at 340-341.) The interrogatories in question here really are no different.

This objection by plaintiff is not a justification to refuse to provide a response to the interrogatories, lacks merit, and should be removed.

Plaintiff's Response to Request for Production of Documents

The production requests seeks the documents that support plaintiffs contentions regarding the same 12 areas of inquiry identified previously. The requests specifically only relate to Mr. Blakeman just like the interrogatories.

No Documents Have Been Produced Despite Plaintiffs Asserting They Will Produce Them

Each plaintiff indicates after objections as to Requests Numbers 1, 2, 3, 4, 5, 7, 8, and 9 that documents will be produced. Documents were to be produced in 30 days as made in the request. (See FRCP Rule 34(b)(2)(B).) **NO DOCUMENTS WERE PRODUCED**.

There is no excuse for delaying producing this information other to prejudice Mr. Blakeman's defenses. This is particularly egregious in that you are aware that Mr. Blakeman has a scheduled deposition upcoming. Yet plaintiffs seek to sand bag him.

The objections plaintiffs have asserted are also largely without merit and it is unknown if any information is being withheld based on the objections. If responsive material is being withheld the objection must so state. (See FRCP Rule 34(b)(2)(C).) The response must also specify the part of the request being objected to. (See id.) No such indication is made by the plaintiffs.

Please confirm whether any responsive information is being withheld and if any objection is being made to only part of the request as opposed the entire request.

Additionally, the objections lack merit. Each of the boilerplate objections asserted in response to every request by each plaintiff is addressed below.

Plaintiffs' Objection: The Production Request is Premature as Seeking Information Related to Contentions

Plaintiff objects that producing the information supporting its contentions is premature on the same basis as it relates to contentions. They again cite to *Kmeic* and *Folz*. Neither case though addresses "contention" production requests.

In fact the Court in *In re Convergent Technologies Securities Litigation* expressly noted that the analysis to be applied to when contention interrogatories needed be answered does not apply to production requests. (*In re Convergent Technologies Securities Litigation*, 108 F.R.D. at 333 "Nor do the generalizations articulated here apply to Rule 34 requests for documents that bear on material factual allegations.")

The requests at issue here bear on material factual allegations each plaintiff has made against Mr. Blakeman. Material facts are discoverable at the outset of litigation and these facts are not ones that would be in the exclusive control of any defendant.

Plaintiffs have had an opportunity through informal requests from the City of Palos Verdes and in discovery in this litigation to obtain thousands of police records. Plaintiffs have identified hundreds of witnesses that purportedly support their case. Plaintiffs have identified various documents in initial disclosures.

These requests only seek documents that pertain to the material allegations made against Mr. Blakeman. We are unable to identify or find a single document produced in discovery to date that indicates Mr. Blakeman ever did anything to support plaintiffs' claims against him. That is why the request for production asks for such documents. If (as is apparently the case) there are none your clients are required to so state.

During the deposition of Ms. Reed we learned that plaintiffs have withheld recordings made surreptitiously and not disclosed in its initial disclosures, despite being in existence and in plaintiffs' possession. We unfortunately anticipate that this sort of shirking of the plaintiffs' duty to disclose information will continue.

The objection wholly lacks merit and should be removed.

Plaintiffs ' Objection: the Request Fails to Identify with Reasonable Particularity the Item to be Inspected

The request is rather particular. It seeks documents and those that support a specific allegation. Who better to determine what these documents are than the plaintiffs as plaintiffs are the ones making the allegations.

This objection wholly lacks merit and should be removed.

The Request invades the Attorney Client Privilege and Attorney Work Product Doctrine.

These requests seek documents that support plaintiffs' material allegations made against Mr. Blakeman. They do not seek communication with plaintiffs' counsels. They do not seek information that is work product. If plaintiffs intend to use documents offensively against Mr. Blakeman they cannot withhold such under the cloak of a privilege.

If there is some concern that some document that would be privileged would be at issue for any of the requests related to the material allegations then please inform us why you have such a belief.

* * *

We anticipate that motions to compel further responses and the production of documents will be required. ***As stated previously we will not be producing Mr. Blakeman for deposition until this dispute is resolved***. We will not entertain any delays nor allow plaintiffs to drag this process out as they did with amending their initial disclosures. Please do not delay in providing me your availability for a Rule 37-1 meeting to occur within 10 days of this letter as we will be promptly filling a motion on these issues if necessary and without delay.

Lastly, we desire to depose Mr. Claypool. It is our understanding that his information has been withheld on the basis that you represent him. Please inform us if you will produce him for deposition before Thanksgiving, 2016. If you do not represent Mr. Claypool then please amend the initial disclosures without delay and provide us his contact information.

Very truly yours,
VEATCH CARLSON

RICHARD P. DIEFFENBACH
JOHN P. WORGUL

JPW:
cc: RTM; Robert Cooper

EXHIBIT 4

John Worgul

From: Victor Otten [vic@ottenlawpc.com]

Sent: Tuesday, November 01, 2016 7:11 PM

To: Richard P. Dieffenbach; kfranklin@hansonbridgett.com

Cc: Kavita Tekchandan; kfranklin@hansonbridgett.com; SWolff@hansonbridgett.com; TShower@hansonbridgett.com; dana.fox@lewisbrisbois.com; edward.ward@lewisbrisbois.com; eric.kizirian@lewisbrisbois.com; tera.lutz@lewisbrisbois.com; dmcrowley@boothmitchel.com; Rob Mackey; prossin@veatchfirm.com; John Worgul; pat@patcareylaw.com; peter@havenlaw.com; tphillips@phillipssteel.com; amiller@thephillipsfirm.com; pau@bremerwhyte.com; lbell@bremerwhyte.com; ed.richards@kutakrock.com; antoinette.hewitt@kutakrock.com; rebecca.wilson@kutakrock.com; jacob.song@kutakrock.com; christopher.glos@kutakrock.com; fields@MARKFIELDSLAW.COM; Cooper, Robert S.; Rob Mackey

Subject: RE: Spencer v Lunada--Meet and confer letter to Plaintiffs' counsel;

Dear Mr. Dieffenbach:

Again, we've in receipt of another Friday meet-and-confer email from your office. This time, your letter was emailed to me during last Friday's deposition of co-defendant Angelo Ferrara -- a deposition that I was taking. In your letter, you stake out the position that because of an unrelated discovery dispute: "PLEASE NOTE THAT DUE TO THIS DISCOVERY DISPUTE MR. BLAKEMAN WILL NOT BE PRODUCED FOR DEPOSITION UNTIL THIS DISPUTE HAS BEEN RESOLVED." There is no agreement to reschedule Mr. Blakeman's deposition, and such unilateral rescheduling is not permitted under the federal rules and is otherwise improper.

We are accommodating to reasonable requests. A family, medical or other emergency might be a reason to accommodate rescheduling a deposition – but no such fact exist here. Instead, you attempt to unilaterally cancel a deposition because you're unhappy with well-founded (and entirely unrelated) objections to your client's inappropriate discovery. Indeed, as you well know, a lawyer has no authority unilaterally to cancel a deposition that is reasonably noticed in writing pursuant to Fed.R.Civ.P. 30(b)(1), which is a step only the Court is empowered to take. Where a party "fails, after being served with proper notice, to appear for that person's deposition," the Federal Rules of Civil Procedure provide that the Court must, at a minimum, require the cancelling party (and/or it's counsel) to "pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. Proc. 37(d)(1)(A).

In sum, after coordinating dates with the numerous co-defendants and both your office and Mr. Blakeman's Cumis-counsel law firm, this deposition has already be re-scheduled once at your office's insistence. Thus, because it has been properly notice and there is no legitimate reason for cancelling it, we expect Mr. Blakeman to attend his deposition next week as scheduled on November 10. Please be apprised that we have ordered a court reporter and videographer for next week's deposition, and are making appropriate travel arrangements. If Mr. Blakeman fails to appear without the necessary relief of the Court, we will seek all appropriate remedies.

Finally, because I'm in trial, I'm not available to meet on the ancillary meet-and-confer request on Plaintiffs' responses to Mr. Blakeman's deficient written discovery requests. I should be able to meet with you on this next week – perhaps we could meet after Mr. Blakeman's deposition. Before then, I'll provide you a written response.

Sincerely,

Vic Otten

EXHIBIT 5

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November 7, 2016

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Re: **SPENCER, CORY v. LUNADA BAY BOYS**
Date of Loss : 04/14/16
Our File No. : 010-08018.

Dear Mr. Franklin and Mr. Otten:

Please note this is the FOURTH meet and confer letter we have been forced to send to your offices in this matter since September 2, 2016.

We respond to Mr. Otten's email notifying us that Plaintiffs' counsel will not meet and confer within the time required by Local Rule 37-1 regarding the Plaintiffs' untimely and improper discovery responses. This refusal is coupled with the demand that Plaintiffs insist on using their sandbagging technique to frustrate preparation of Mr. Blakeman for his deposition noticed for November 10 by withholding substantive responses to specific questions relating to the allegations made against Mr. Blakeman.

The ongoing Plaintiff-induced delay of discovery in this case borders on vexatious conduct and we will seek court intervention to stay the deposition until Plaintiffs have provided their responses to Mr. Blakeman's discovery so that Mr. Blakeman can be made aware of any factual basis for Plaintiffs' allegations against, him as requested in the discovery.

There has been a significant history in this otherwise young case of Plaintiffs stalling to delay the disclosure of information and thereby shirking their obligations under Rule 26(a) and (e). When we first addressed Plaintiffs' discovery shortcomings in our discussion of the inadequate initial disclosures we hoped to avoid the type of discovery abuse we now encounter

(See meet and confer letters of September 2 and September 9, 2016). We sent the written discovery to Plaintiffs' counsel September 16, 2016, timed to allow our receipt of responses before the Reed deposition of October 24 so that we would have the responses in time for that deposition. Mr. Otten advised there was an issue with the personal service on his office; the mail service on all other counsel including Hansen Bridgett was agreed to be the date from which responses should be calculated. That would have meant responses were due October 19; the responses, which were only objections, were instead served untimely and by mail from San Francisco on October 20. My office received them October 25 after Ms. Reed's deposition had ended (not that the untimely objections without factual response, and refusal to respond, would have been of any value anyway). We sent the third meet and confer letter outlining the problems with the discovery responses to you by email October 28, 2016. Mr. Otten's responsive email of November 1 amplifies the intentional non-compliance Plaintiffs persist in practicing.

Examples of the ongoing and improper tactical delays and "hide-the-ball" gamesmanship employed by Plaintiffs to date abound. They include:

- Initial disclosures which were inadequate and required an extensive meet and confer letter to obtain disclosures which should have been made, including witness identification and document;
- Plaintiffs' counsel's delay in providing the promised Supplemental Disclosures, promised by September 23, 2016 but not served until October 2, 2016;
- Supplemental disclosures which failed to identify documents in Plaintiffs' custody which were then sprung on Defense counsel only at Plaintiff Cory Spencer's or Plaintiff Diana Milena Reed's deposition (*Cf.* Plaintiffs' supplemental disclosures and see exhibits to depositions of Spencer and Reed;
- Untimely Responses to Mr. Blakeman's written discovery, served late and by mail from Plaintiffs' counsel's San Francisco attorneys' offices in order to frustrate their use at the deposition of Ms. Reed (See Blakeman's Interrogatories and Requests for Production to Plaintiffs served by Mail September 16, 2016, and Plaintiffs' untimely, objection-only responses served by mail from San Francisco October 20, 2016, and the Notice of Ms. Reed's deposition setting the deposition for October 24, 3016;
- Improper objections, which had been waived by the untimeliness of the responses, to Mr. Blakeman's written discovery, which discovery merely sought the specific facts, witnesses and documents Plaintiffs have to support the allegations made in the complaint (see interrogatories and Plaintiffs' untimely objection-only responses);
- Testimony at the depositions of the two named class representative individuals (Spencer and Reed) indicating neither has any factual basis for any of the allegations against Mr. Blakeman;
- A refusal to comply with the Central District's Local Rule 37-1 after receiving our October 28, 2016 meet and confer letter, despite five separate days being offered by my office as suitable for such a meeting (See email of November 1, 2016 from Plaintiffs' counsel Otten);
- Setting up the timing of this dispute to frustrate our ability to protect Mr. Blakeman and to try to game the local rules regarding discovery motions as a means of forcing the deposition before the matter can be heard by noticed motion (See notice of deposition of Brant Blakeman for November 10, 2016);

- Failing to respond substantively to any of the substantive issues presented in the October 28 meet and confer letter (See email of November 1, 2016 from Plaintiffs' counsel Otten).

It has also become apparent during the parties' depositions that have been taken thus far that Plaintiffs' counsel is failing to supplement initial disclosures and is intentionally withholding pertinent information pertaining to the substance of alleged predicate acts which Plaintiffs intend to assert as part of their case-in-chief against the defendants' individually and as a purported "criminal gang." This alleged evidence of predicate acts includes conduct alleged against our client Mr. Blakeman, is clearly related to Plaintiffs' case in chief, and would not qualify as impeachment. Weak and irrelevant as the evidence is, such as a claim that Mr. Blakeman years ago got in a fight with Bill Kaemerle, another surfer from the area, you have a duty to disclose any and all witnesses and documents that you believe support your case. Thus far, it is clear you will attempt to sandbag every defendant by abusing the discovery and disclosure rules. We are seeking court intervention to prevent you from continuing to do so.

We had hoped that at some point Plaintiffs counsel would recognize that these claims require evidence, and the filing of this action requires honest and actual compliance with discovery. We note that Plaintiffs' intransigence leaves us no alternative but to seek court intervention to prevent any further effort to prejudice Mr. Blakeman or his defense in this case. .

We will ask the Magistrate Judge *ex parte* to stay the deposition of Mr. Blakeman until such time as Plaintiffs provide the full and complete answers to the written discovery served by Mr. Blakeman October 16, 2016, and for an order that any documents not disclosed either in response to that discovery or in the initial or supplemental disclosures by Plaintiffs be excluded for the action and excluded specifically from any evidence presented as to Mr. Blakeman.

Alternatively we will ask the magistrate Judge to stay all non-class certification related discovery until such time as a class is certified, if ever, since if certification is denied your clients' claims will be individual in nature and (based on their deposition testimony) will have nothing to do with any actionable claims by your clients against Mr. Blakeman. We will request that the Magistrate order monetary sanctions against Plaintiffs and their counsel for the cost of these delays and the cost of bringing this motion for a protective order.

We provided thirteen days notice that Mr. Blakeman would not be produced pending resolution of this dispute. That is more than enough time to cancel any travel or reporter or videographer plans without incurring a penalty, so you should act to cancel those services or not at your own expense.

Lastly, please reconsider plaintiff's position that they will not comply with the meet and confer requirements of Local Rule 37-1. We can not file a motion until the ten day time

frame has expired to afford plaintiffs the opportunity to change their position and to comply with the local rule. We have limited availability; therefore if there is a change in plaintiffs' position, please notify us with out delay.

Very truly yours,
VEATCH CARLSON

RICHARD P. DIEFFENBACH

:
cc: RTM; JPW; Robert Cooper